IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.RAMACHANDRAN
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 15TH JANUARY 2007 / 25TH PAUSHA 1928

CRP.No. 856 of 1995()

RCA.111/1994 of DISTRICT COURT, THALASSERY
RCP.88/1993 of ADDL.MUNSIFF COURT, KANNUR
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REVN. PETITIONER:

CHENCHERI KUNHIVEETTIL KARUNAKARAN NAMBIAR, S/O.CHANDU NAMBIAR, AGED 50 YEARS, MEDICAL PRACTITIONER, VISWANATH PHARMACY, KACHERIPARA, AZHIKODE AMSAM AND DESAM, KANNUR TALUK.

BY ADV. SRI.V.RAJAGOPAL
SRI.BABU PAUL

RESPONDENTS:

MURINKIACHERI MANIKKOTE JANARDHANAN NAMBIAR, S/O.GOVINDAN NAMBIAR, PROPRIETOR, IDEAL COMMERCIAL INSTITUTE, VANKULATH VAYAL, AZHIKODE AMSAM AND DESAM, KANNUR.

BY ADV. SRI.V.R.K.KAIMAL

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 18/12/2006, THE COURT ON 15/01/2007, PASSED THE FOLLOWING:

M. Ramachandran & A.K. Basheer, JJ.

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3. In the counter statement filed by the respondent it was contended by him that the bonafide need set up by the petitioner/landlord was not bonafide or genuine. His attempt was only to evict the respondent/tenant from the building and to let it out on higher rent. It was also contended that vacant rooms were available in the nearby building which belonged to the petitioner. He can start the Nursing Home in those rooms if at all he wanted to establish a Nursing Home. It was further contended by the respondent that he was depending on the income from the Typewriting Institute and that no other suitable buildings were available in the locality to shift the same.

4. Petitioner/landlord was examined as PW.1 before the Rent Control Court and Exts.A1 to A5 were marked on his side. Rws.1 and 2 were examined on the side of the respondent and Exts.B1 to B7 were marked on his side. The report of the Advocate Commissioner was marked as Ext.C1. Exts.X1 to X4 were also marked in the case in the course of the trial. The Rent Control Court found that the petitioner had not succeeded in establishing his case of bonafide need for own occupation under Section 11(3) of the Act. The Court took the view that petitioner can start the Nursing Home in the building which is already in his possession if he so intended. Accordingly the Rent Control Court dismissed the Eviction Petition. Though the above order was challenged by the petitioner before the Rent Control Appellate Authority, the appeal also met with the same fate. It is in the above circumstances that the petitioner has preferred this revision petition under Section 20 of the Act.

5. We have heard learned counsel for the parties at length and perused the entire material on record carefully.

6. As mentioned earlier, petitioner who is a registered Ayurvedic Medical Practitioner is in occupation of the ground floor. He is having his consultation room in one of the rooms in the ground floor. It is the admitted position that petitioner is using the other two rooms and the verandah on the ground floor for the purpose of stocking and dispensing medicines to the patients who come for consultation to the clinic . It is on record that the tenanted premises comprise of 3 rooms in the upstair portion of the building. The case of the petitioner is that he needs to provide inpatient facility in the upstair portion.

7. It is contended by the respondent/tenant that the need set up by the petitioner is not at all bonafide or genuine. It is pointed out by him that petitioner is in possession of vacant rooms in the building situated to the south of the tenanted premises and if the landlord wanted to start a nursing home, he can do so in those rooms in the other building.

8. In this context it would be profitable to refer to Ext.C1 report filed by the Advocate Commissioner. It was noticed by the Advocate Commissioner that the ground floor which is in the possession of the petitioner/landlord comprised of 3 rooms bearing Nos.465, 466 and 467 apart from a small “staircase” room having an area of 30 sq.ft. The 3 rooms had a total square area of 251 sq.ft. There were 2 verandahs, one in the front and one at the back. The Commissioner noticed that one of the 3 rooms was being used by the petitioner for stocking his medicines. The larger room in the ground floor was being used by the petitioner for dispensing/sale of medicines to the patients. Room No.467 which is the smallest of the 3 rooms was being used by the petitioner as his consulting room. The verandah situated at the rear

side of the building which has a low roofing was being used for stocking raw materials like herbs, roots, barks etc. for preparation of Ayurvedic medicines. The tenanted premises in the upstair portion also comprised of 3 rooms with identical sizes. Respondent is conducting his Typewriting Institute in the said premises. The Advocate Commissioner stated in his report that the tenanted premises in the upstair portion would be suitable for a Nursing Home.

9. The Advocate Commissioner had inspected the other 3 rooms which were in the possession of the petitioner as pointed out by the respondent. These 3 rooms are situated in an adjacent old building lying on the south of the tenanted premises. The Advocate Commissioner stated in his report that these 3 rooms bearing Nos.470, 471 and 472 are "very small narrow and without proper ventilation" and therefore "are not considered suitable for the purpose".

10. It is not in dispute that the 3 rooms mentioned above which are situated in a nearby building and which of course belong to the petitioner/landlord are now being used by him for preparation of various Ayurvedic medicines. It is also on record that a nearby shed is also being used by the petitioner for manufacture of medicines. The Advocate Commissioner had given the details of various vessels, tools and raw materials which were found in those rooms at the time of his inspection. It was also noticed by the Advocate Commissioner that the upstair room (bearing No.470) is having a low roof without proper ventilation and flooring and can be used only for storing old and sundry items. Similarly the shed situated nearby could also be used only for the purpose of preparation of medicines.

11. The Rent Control Court however took the view that the 3

rooms mentioned above could be used by the petitioner/landlord for starting the Nursing Home if he so intended. The Rent Control Court further proceeded to hold that the landlord can convert those rooms into a suitable form for the purpose of starting a Nursing Home". It was in that view that the Rent Control Court turned down the prayer for eviction made by the petitioner under Section 11(3) of the Act.

12. The Appellate Authority confirmed the order of the Rent Control Court and went on to hold further that the need set up by the petitioner/landlord cannot be held to be genuine since the total area of the rooms in the other building exceeds the area available in the tenanted premises. Curiously the Appellate Authority further found that the modification which may have to be carried out in the tenanted premises can well be effected in the other building which was in the possession of the petitioner himself.

13. It is beyond controversy that petitioner is a registered Ayurvedic Medical Practitioner. He is having his consultation room in the ground floor of the building, in the upstair portion of which the tenanted premises are situated. It may be true that petitioner has got possession of 3 rooms in an adjoining building. The Commissioner had categorically stated that those rooms were very small narrow and without proper ventilation. They were situated in an old building. As rightly pointed out by the learned counsel for the petitioner it would be very convenient for the petitioner to provide inpatient facility in the very same building where he is now having his consultation room and facilities for dispensing medicines to his patients. He can also use the large verandahs on the two floors in the same building. It is also pointed out by the learned counsel that the 3 rooms in the other

building can in no way be modified for the purpose of providing inpatient facility since the said building is not only very old but it is situated away from the clinic of the petitioner.

14. We find considerable force in the above contention raised on behalf of the petitioner. On a careful examination of the evidence on record, particularly the report of the Advocate Commissioner we are satisfied that the need put forth by the petitioner is bonafide and genuine. The mere fact that petitioner has got 3 small narrow and unventilated rooms in an adjoining old building or another shed nearby should not, in our view, defeat his claim for eviction of the respondent firm from the tenanted premises. The authorities below had not adverted to the relevant aspects of the issue in their proper perspective. The materials gathered by the Advocate Commissioner in the course of his inspection as well as the condition of the 3 rooms in the old building have not been properly appreciated. The Rent Control Court and the Appellate Authority have overlooked the fact that the 3 rooms and the shed referred to above are not being kept idle by the petitioner. They are being used for manufacturing medicines and other allied purposes. It was not necessary for the authorities below to advise the petitioner to make necessary modifications to the other rooms in the old building rather than seeking eviction of the tenanted premises. In our view the petitioner had established his case satisfactorily and stated special reasons for seeking eviction. In that view of the matter we have no hesitation in reversing the finding entered by the 2 authorities below as regards the need put forth by the petitioner under section 11(3) . We hold that the need projected by the petitioner is bonafide and genuine.

15. The next question is whether the respondent/tenant was

entitled to get the benefit of the second proviso under Section 11(3). We find that the parties have let in evidence in this regard. What remains now is only a consideration of the materials brought on record by the parties and decide the question of availability of protection of the 2nd proviso in accordance with law. The Eviction Petition was filed way back in the year 1994. More than 12 years have elapsed after the institution of the proceedings. Therefore in the peculiar facts and circumstances of this case we are of the view that the case need not be remitted to the trial court, but it can be sent back to the Appellate Authority to consider the question of availability of the protection of the second proviso to the respondent/tenant. It will be open to the appellate authority to afford opportunity to the parties to adduce additional evidence, either oral or documentary, if any under Section 18(4) of the Act. It is made clear that the remit is confined only to consider the question of protection of the second proviso. The appellate authority shall dispose of the appeal as expeditiously as possible at any rate within three months from the date of receipt of a copy of this order.

Revision Petition is disposed of in the above terms.

M. Ramachadran
Judge.

A.K. Basheer
Judge.

an.

A.K. BASHEER, J

CRP.856 OF 1995

O R D E R

23/1/2007